

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NEKESHIA JEAN-BAPTISTE,

Plaintiff,

- against -

CEREBRAL PALSY OF WESTCHESTER,

Defendant.
-----x

Docket No.:

JUDGE CONNER

FILED
U.S. DISTRICT COURT
2006 JUL 31 A 9:03
S.D. OF N.Y. W.P.

COMPLAINT
06 CIV. 5754
PLAINTIFF DEMANDS
A JURY TRIAL

Plaintiff, NEKESHIA JEAN-BAPTISTE, by her attorneys, GOODSTEIN & WEST, complaining of the Defendant, alleges as follows:

1. This is an action for injunctive relief and compensatory damages on behalf of plaintiff. This suit is authorized pursuant to Title VII of the Civil Rights Act of 1964 (42 USC §2000e *et. seq.*). Plaintiff also has a pendent state claim pursuant to the New York Human Rights Law. Jurisdiction of this Court is invoked pursuant to 42 USC §2000e-5(f) and pursuant to the principle of pendent state jurisdiction; the New York Human Rights Law (N.Y.S. Executive Law §290 *et seq.*). Jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights secured by 42 USC §2000e *et. seq.* providing for injunctive and other relief against sexual discrimination in employment.

PARTIES

2. Plaintiff, NEKESHIA JEAN-BAPTISTE, (hereinafter "JEAN-BAPTISTE") is a female who resides in the County of the Westchester in the State of New York. Plaintiff has filed a charge with the Equal Employment Opportunity Commission and has received a Notice of Right to Sue. (A copy of the charge is annexed as Exhibit 1 and a copy of the Notice of the Right to Sue

is annexed as Exhibit 2.)

3. This action has been brought within 90 days of receipt of the Notice of Right to Sue regarding the complaint.

4. Defendant CEREBRAL PALSY OF WESTCHESTER (hereinafter "PALSY"), is a not-for-profit corporation doing business in the State of New York. Defendant is an employer as defined by Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law. On information and belief, defendant has employed more than 100 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

FACTS

5. Plaintiff, NEKESHIA JEAN-BAPTISTE is a female and was employed as a teacher's aid.

6. Ms. Jean-Baptiste began her employment with Cerebral Palsy of Westchester in approximately 1999

7. At the time referred to, Ms. Jean-Baptiste is and/or was pregnant.

8. On or about December 20, 2005 because she took off time as a result of complications of her pregnancy she was told by her supervisor Tina Richmond and by Lisa Castiglia that they could not depend on her and that she should resign. Ms. Jean-Baptiste refused to resign.

9. On December 23, 2005, she informed her supervisor that she had to take off a day for sickness.

10. On December 26, 2005, the employer gave Ms. Jean-Baptiste a form to be completed by her doctor. She was informed that she could not return to work until this document was completed. (A copy of the form give to Ms. Jean-Baptiste and completed by her doctor, Romelle J.

Maloney is annexed as Exhibit 3.)

11. On January 4, 2006, Ms. Jean-Baptiste returned the form. The next day the employer informed her that was “in receipt of a doctor’s note restricting NeKeshia Jean-Baptiste from performing her full job duties due to her pregnancy.” Further, the letter stated that the employer “does not have light duty and Ms. Jean-Baptiste can not return to work until she is cleared for full duty.” (A copy of the January 5, 2006 letter is annexed as Exhibit 4.)

12. Not only does Ms. Jean-Baptiste not have to do heavy lifting, but normally she works as part of a team with a male, Michael Canton, who does the sporadic heavy lifting if required.

13. Further, Ms. Jean-Baptiste is assigned to the room 6 team. The room 5 team never has to do any lifting. Accordingly, the employer’s refusal to continue Ms. Jean-Baptiste’s employment is sex and pregnancy discrimination.

AS AND FOR A FIRST CAUSE OF ACTION

14. Plaintiff was subjected to sexual discrimination because of her pregnancy in violation of Title VII of the Civil Rights Act of 1964 (42 USC §2000e *et. seq.*).

PENDENT STATE CLAIM

15. Defendant is an employer as that term is defined by the New York State Human Rights Law (Executive Law §290 *et seq.*).

16. Plaintiff was subjected to sexual discrimination because of her pregnancy in violation of the New York State Human Rights Law (Executive Law §290 *et seq.*).

17. Plaintiff demands a jury trial on her Title VII cause of action and on her pendent state claims.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

On the First Cause of Action

- (a) An award of back pay and all fringe benefits from January 5, 2006;
- (b) Re-employment by defendant;
- (c) An award of compensatory/punitive damages pursuant to Title VII of the Civil Rights Act of 1964 in an amount not to exceed Three Hundred thousand Dollars (\$300,000); and
- (d) An award of reasonable attorney's fees pursuant to Title VII of the Civil Rights Act of 1964.

On the Pendent Cause of Action

- (a) An Award of compensatory damages in the amount of Five Hundred Thousand Dollars (\$500,000)

Together with such other and further relief as to the Court deems just and proper.

Dated: New Rochelle, New York
July 27, 2006

Yours, etc.,

GOODSTEIN & WEST

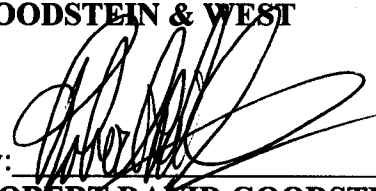
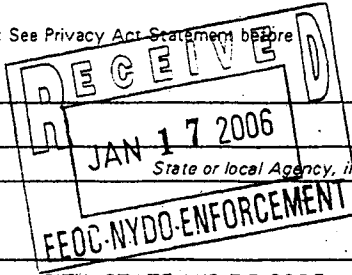
By: 
ROBERT DAVID GOODSTEIN (RDG 5443)
Attorneys for Plaintiff
56 Harrison Street, Suite 401
New Rochelle, New York 10801
(914) 632-8382

EXHIBIT 1

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

☐ FEPA
☒ EEOC

520-2006-00257



_____ and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)
MS. NEKESHIA JEAN-BAPTISTE HOME TELEPHONE (Include Area Code)
(914) 667-4862

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH
2325 Cortlandt Street, Apt. 2-D, Mt. Vernon, New York 10550 2/12/74

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME CEREBRAL PALSY OF WESTCHESTER NUMBER OF EMPLOYEES, MEMBERS over 200 TELEPHONE (Include Area Code)
(914) 937-3800

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
1186 King Street, Rye Brook, New York 10577 Westchester

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)
☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ AGE
☐ RETALIATION ☐ NATIONAL ORIGIN ☐ DISABILITY ☒ OTHER (Specify) PREGNANCY
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

SEE ANNEXED

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

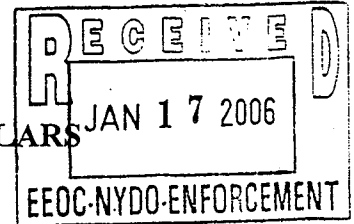
Date

Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

1/13/06

**NEKESHIA JEAN-BAPTISTE
EEOC CHARGE OF DISCRIMINATION - PARTICULARS**



1. NeKeshia Jean-Baptiste was employed by Cerebral Palsy of Westchester as a teacher's aid.
2. Ms. Jean-Baptiste began her employment with Cerebral Palsy of Westchester in approximately 1999
3. Ms. Jean-Baptiste is pregnant.
4. On or about December 20, 2005 because she took off time as a result of complications of her pregnancy she was told by her supervisor Tina Richmond and by Lisa Castiglia that they could not depend on her and that she should resign. Ms. Jean-Baptiste refused to resign.
5. On December 23, 2005, she informed her supervisor that she had to take off a day for sickness.
6. On December 26, 2005, the employer gave Ms. Jean-Baptiste a form to be completed by her doctor. She was informed that she could not return to work until this document was completed. (A copy of the form give to Ms. Jean-Baptiste and completed by her doctor, Romelle J. Maloney, Esq. is annexed to this charge.)
7. On January 4, 2006, Ms. Jean-Baptiste returned the form. The next day the employer informed her that was "in receipt of a doctor's note restricting NeKeshia Jean-Baptiste from performing her full job duties due to her pregnancy." Further, the letter stated that the employer "does not have light duty and Ms. Jean-Baptiste can not return to work until she is cleared for full duty." (A copy of the January 5, 2006 letter is annexed to this charge.)
8. Not only does Ms. Jean-Baptiste not have to do heavy lifting, but normally she works as part of a team with a male, Michael Canton, who does the sporadic heavy lifting if required.
9. Further, Ms. Jean-Baptiste is assigned to the room 6 team. The room 5 team never has to do any lifting. Accordingly, the employer's refusal to continue Ms. Jean-Baptiste's employment is sex and pregnancy discrimination.

EXHIBIT 2

DISMISSAL AND NOTICE OF RIGHTS

To: **Nekesha Jean-Baptiste**
2325 Cortland Street
Apt. 2-D
Mount Vernon, NY 10550

From: **New York District Office - 520**
33 Whitehall Street
5th Floor
New York, NY 10004

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2006-00257**Lawrence M. Angelo,**
Investigator**(212) 336-3763****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐

Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐

While reasonable efforts were made to locate you, we were not able to do so.

☐

You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Enclosure(s)

Spencer H. Lewis, Jr.,
Director

5/30/2006

(Date Mailed)

cc: **CEREBRAL PALSY OF WESTCHESTER**
1186 King Street
Purchase, NY 10577

Little Mendelson, PC
Attn: Andrew P. Marks, Esq.
One Gateway Center
3rd Floor
Newark, NJ 07102-5311

EXHIBIT 3

Physical Requirements for Job Performance

Job Title: Teacher's Aide

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

This position requires employees to:

- A. Provide personal health services to students
- B. Lift students and transfer from wheelchair to toilet, dress table and mobility apparatus
- C. Transfer students to assigned locations
- D. Feed students
- E. Clean and disinfect utensils and surfaces
- F. Physically assist in the evacuation of students
- G. Clean and organize the classroom
- H. Conduct activities outdoors and in the community

While performing the duties of this job, the employee is regularly required to perform the following activities. **PLEASE INITIAL THOSE ACTIVITIES THE EMPLOYEE IS UNABLE TO PERFORM.**

<input type="checkbox"/> Stand	<input checked="" type="checkbox"/> Lift and/or move up to 50 pounds
<input type="checkbox"/> Walk	<input checked="" type="checkbox"/> Lift and/or move up to 25 pounds
<input type="checkbox"/> Grasp	<input type="checkbox"/> Close vision
<input type="checkbox"/> Handle or feel	<input type="checkbox"/> Distance vision
<input type="checkbox"/> Reach with hands and arms	<input type="checkbox"/> Peripheral vision
<input type="checkbox"/> Stoop	<input type="checkbox"/> Depth perception
<input type="checkbox"/> Kneel	<input type="checkbox"/> Ability to adjust focus
<input type="checkbox"/> Crouch	<input type="checkbox"/> Talk and hear
<input checked="" type="checkbox"/> Crawl	<input type="checkbox"/> Smell
<input type="checkbox"/> Sit	

Patient: NEKESHIA JEN-BAPTISTE

Physician Signature: [Signature]

Date: 1/4/06

Address: _____

Phone: _____



ROMELLE J. MALONEY, M.D.
175 Memorial Hwy, Ste 1-17
New Rochelle, NY 10501
(914) 235-6060

EXHIBIT 4



Executive Board

President

Richard N. Osterer

Executive Vice President

Gerald Feibusch

Vice President

Richard Eising

Treasurer

Dennis Citarella

Secretary

Ivan Wolff

Michael Fierstein

Mark Fisher

William Hallenbeck

Alan Landauer

Michael Osterer

Venita Osterer

Heidi Ouaknine

Executive Director

Linda Kuck

January 5, 2006

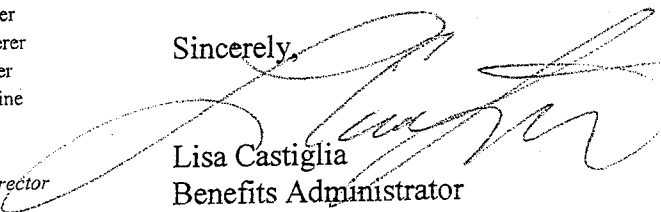
To Whom It May Concern:

Please be aware that I am in receipt of a doctor's note restricting Nekeshia Jean-Baptiste from performing her full job duties due to her pregnancy. Nekeshia is employed as a Habilitation Assistant and the job requires her to lift on a daily basis.

Unfortunately the agency does not have light duty and Ms. Jean-Baptiste cannot return to work until she is cleared for full duty.

If you have any questions I can be reached at (914) 937-3800, extension 258.

Sincerely,


Lisa Castiglia
Benefits Administrator